Black Lives Matter Students Shut Down the ACLU's Campus Free Speech Event Because 'Liberalism Is White Supremacy'

"The revolution will not uphold the Constitution."

Robby Soave Oct. 4, 2017 2:30 pm

http://reason.com/blog/2017/10/04/black-lives-matter-students-shut-down-th

Students affiliated with the Black Lives Matter movement crashed an event at the College of William & Mary, rushed the stage, and prevented the invited guest—the American Civil Liberties Union's Claire Gastañaga, a W & M alum—from speaking.

Ironically, Gastañaga had intended to speak on the subject, "Students and the First Amendment."

The disruption was livestreamed on BLM at W&M's Facebook page. Students took to the stage just a few moments after Gastañaga began her remarks. At first, she attempted to spin the demonstration as a welcome example of the kind of thing she had come to campus to discuss, commenting "Good, I like this," as they lined up and raised their signs. "I'm going to talk to you about knowing your rights, and protests and demonstrations, which this illustrates very well. Then I'm going to respond to questions from the moderators, and then questions from the audience."

It was the last remark she was able to make before protesters drowned her out with cries of, "ACLU, you protect Hitler, too." They also chanted, "the oppressed are not impressed," "shame, shame, shame, shame," (an ode to the Faith Militant's treatment of Cersei Lannister in *Game of Thrones*, though why anyone would want to be associated with the religious fanatics in that particular conflict is beyond me), "blood on your hands," "the revolution will not uphold the Constitution," and, uh, "liberalism is white supremacy."

This went on for nearly 20 minutes. Eventually, according to the campus's *Flat Hat News*, one of the college's co-organizers of the event handed a microphone to the protest's leader, who delivered a prepared statement. The disruption was apparently payback for the ACLU's principled First Amendment defense of the Charlottesville alt-right's civil liberties.

Organizers then canceled the event; some members of the audience approached the podium in an attempt to speak with Gastañaga, but the protesters would not permit it. They surrounded Gastañaga, raised their voices even louder, and drove everybody else away.

The college released what can only be described as an incredibly tepid statement:

"William & Mary has a powerful commitment to the free play of ideas. We have a campus where respectful dialogue, especially in disagreement, is encouraged so that we can listen and learn from views that differ from our own, so that we can freely express our own views, and so that debate can occur. Unfortunately, that type of exchange was unable to take place Wednesday night when an event to discuss a very important matter – the meaning of the First Amendment — could not be held as planned. ..."

Silencing certain voices in order to advance the cause of others is not acceptable in our community. This stifles debate and prevents those who've come to hear a speaker, our students in particular, from asking questions, often hard questions, and from engaging in debate where the strength of ideas, not the power of shouting, is the currency. William & Mary must be a campus that welcomes difficult conversations, honest debate and civil dialogue.

Absent a promise to identify the perpetrators and make sure this never happens again, the college's statement is meaningless. If officials are just going to stand by while students make it impossible to even have a conversation *about*free speech on campus, the matter is already settled: there is no free speech at William & Mary.

These students have clearly made up their minds about free speech: they don't want to share it with anyone else—especially Nazis, but also civil liberties lawyers who happen to be experts on the thing they are willfully misunderstanding: the First Amendment. Their ideological position is obviously incoherent—Liberalism is white supremacy? What?—and would not stand up to scrutiny, which is probably why they have decided to make open debate an impossibility on campus. They really shouldn't get away with this.

University of Michigan President: I'll Stand Next to You While You Censor Posters

By Adam Steinbaugh October 5, 2016

Last week, posters with "racially charged messages" appeared on the campus of the University of Michigan, prompting condemnations from students and the university's administration. University President Mark Schlissel promptly issued a statement affirming the institution's commitment to "defend[ing] any individual's right to free speech on our campus," while decrying the content of the posters. On Sunday, however, Schlissel made a troubling clarification to that statement, saying that while the First Amendment prohibits *administrators* from censoring the posters, he would gladly stand by students while *they* tore down messages they disagreed with.

Schlissel's remarks, transcribed below, were captured on video:

U-M president addresses racially-charged fliers on campus

> I have absolutely no idea to how to prevent one person with hate in their heart from posting a poster in a building of a public university. Don't know how to do that. I've never heard a good idea about how to do it. We're not going to turn the University of Michigan into a police state where there are people and cameras everywhere you look and you'll never have a private moment. Because that's what it would take to prevent hateful posters by one sick and mean and terrible person to hurt all of us. So I don't know how to do it.
>
> That's why what we're talking about these things, we're talking about, to respond to these things—that's what we know how to do. We know how to support one another. We know how to step up and declare these things for what they are: hateful, racist acts.
>
> This idea of taking down posters—I can't legally take down a poster. I think I'd be sued and fired. But you can. And if you don't feel safe taking down a poster, call my office. I'll come stand next to you while you take it down. You'll be plenty safe.
>
> If there's chalk on the Diag [where chalking is permitted] that offends you, that's racist, misogynistic, homophobic, transphobic, you fill in the blank, anti-Islamic—get a bucket, call me, I'm going to stand next to you while you erase it. Then you'll be safe. That's how we can fight this, together. And I know that many of my faculty and leadership colleagues will be happy to do the same if you can't get ahold of me.

The appropriate response to offensive speech is *more* speech, not less. When the communicative value of expression relies on preventing another from speaking—through tearing down posters, defacing banners, or shouting down speakers—that isn't 'more' speech. The marketplace of ideas works by convincing people that an idea is wrong, not by preventing others from hearing views they find offensive. Instead of giving students a bucket of water to erase chalk, Schlissel should give them chalk to respond. Instead of standing by while posters are torn down, Schlissel should stand guard while additional posters are put up. Erasing offensive speech does little more than whitewash the reminder that views many find offensive persist, and hinders the opportunity to publicly contradict those views.

Schlissel's remarks endorsing censorship stand in contrast to his earlier responses to offensive speech:

Dr. Mark Schlissel
@DrMarkSchlissel

Follow

No one should feel unsafe in our @umich community. Help me Spread Ideas, Not Hate. #UmichAllies myumi.ch/65Oor

6:15 PM - 3 Oct 2016

109 **154**

Spreading ideas is indeed the right approach. Hopefully, Schlissel's comments about censoring student speech are but a momentary departure from it.

Schools: University of Michigan

Schools Should Realize That 'Davis' Is the Solution

By Joe Cohn July 16, 2013

As most *Torch* readers and FIRE followers know, on May 9 the Departments of Justice (DOJ) and Education (ED) entered into a settlement agreement, which they referred to as a "blueprint," with the University of Montana. Today, FIRE and a broad coalition of organizations and distinguished civil libertarians, attorneys, and academics sent DOJ and ED a letter urging the Departments to retract the blueprint immediately.

In the blueprint, "sexual harassment" is problematically defined as "unwelcome conduct of a sexual nature," including "verbal conduct." The blueprint explicitly rejects the use of an objective, "reasonable person" standard in evaluating whether conduct constitutes sexual harassment. Without the objective component, speech protected by the First Amendment may constitute sexual harassment if a listener is offended, however unreasonably.

Today's coalition letter addresses how that broad definition of sexual harassment could be applied to many forms of protected speech. The letter explains:

> Under the blueprint's mandate, sexual or gender-based speech that is offensive to only the most unreasonable student constitutes "sexual harassment" prohibited by Title IV of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972—despite being protected by the First Amendment. The threat to free expression and academic freedom is obvious; per the blueprint's definition, a classroom discussion of Lolita, a campus reading of Allen Ginsberg's "Howl," a dorm-room viewing of a Sarah Silverman comedy routine, or a cafeteria debate about same-sex marriage will each constitute "sexual harassment" if a single student is made uncomfortable. This untenable result is plainly unconstitutional and sharply at odds with the United States Supreme Court's famous conception of the American college campus as being "peculiarly the 'marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted).
>
> Indeed, the blueprint's definition ignores decades of long-settled precedent establishing the primacy of the First Amendment on public campuses. *See, e.g., Widmar v. Vincent*, 454 U.S. 263, 268-69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities."); *Healy*, 408 U.S. at 180 ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'").

⇒ Navigate

FIRE's Latest

Free speech on campus is 'essential the free formation of public opinion response to Robert Post

October 4, 2017

Alice Dreger to deliver keynote at FI faculty conference, and presenters announced!

October 4, 2017

Due process legal update

October 3, 2017

Don't be fooled, Harvard is not 'back pedaling'

October 3, 2017

Banned Books Week: When FIRE defended the right to read

September 29, 2017

Poll: Nearly three quarters of Americans agree campus sex assaul policies must be fair to complainant and accused students

September 29, 2017

Banned Books Week exclusive: The "Howl" obscenity trial opinion

September 28, 2017

Colleges and universities have a legal and moral duty to effectively respond to all accusations of sexual harassment that, if true, would be actionable. However, institutions must accomplish this goal without trampling student and faculty First Amendment rights. These dual responsibilities need not be in tension. The solution, as FIRE explained in our May 7, 2012, coalition letter to ED's Office for Civil Rights (OCR), is:

> to make clear that institutions satisfy Title IX by adopting no more and no less than the definition of prohibited harassment in the educational context set forth by the Supreme Court of the United States in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 651 (1999).

In *Davis*, the Court gave institutions the tools they need to respond effectively to student-on-student sexual harassment when it held that behavior constitutes hostile environment sexual harassment if it is discriminatory, targeted, and "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."

In its January 19, 2001, *Revised Sexual Harassment Guidance*, OCR endorsed this standard, stating:

> Although the terms used by the Court in Davis are in some ways different from the words used to define hostile environment harassment in the 1997 guidance (see, e.g., 62 FR 12041, "conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment"), the definitions are consistent. Both the Court's and the Department's definitions are contextual descriptions intended to capture the same concept – that under Title IX, the conduct must be sufficiently serious that it adversely affects a student's ability to participate in or benefit from the school's program. In determining whether harassment is actionable, both Davis and the Department tell schools to look at the "constellation of surrounding circumstances, expectations, and relationships" (526 U.S. At 651 (citing Oncale)), and the Davis Court cited approvingly to the underlying core factors described in the 1997 guidance for evaluating the context of the harassment. Second, schools benefit from consistency and simplicity in understanding what is sexual harassment for which the school must take responsive action. A multiplicity of definitions would not serve this purpose.

OCR and the Department of Justice would be wise to retract the blueprint and make clear that the *Davis* standard provides the controlling and constitutional definition of peer sexual harassment in the educational context.

Want to know more about the ED/DOJ "blueprint"? Check out FIRE's Frequently Asked Questions here!
Cases: Departments of Education and Justice: National "Blueprint" for Unconstitutional Speech Codes

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

YOUNG AMERICANS FOR LIBERTY AT KELLOGG COMMUNITY COLLEGE, *et al.*,

Plaintiffs,

v.

KELLOGG COMMUNITY COLLEGE, *et al.*.

Defendants.

Case No.: 1:17-cv-58-RJJ-RSK

THE HONORABLE ROBERT J. JONKER

REPLY BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ARGUMENT 1

I. Defendants cannot evade the facts of this case. 1

A. Defendants cannot pretend that this is anything other than a student speech case. 1

B. Defendants cannot revise the challenged policies or change the reasons that they stopped Plaintiffs and arrested Mrs. Gregoire. 3

II. Defendants cannot evade the fact that their policies violate the First Amendment. 4

A. Both policies are content- and viewpoint-based and were enforced that way. 4

B. The outdoor areas of campus represent designated public fora for students. 6

C. In addition to failing strict scrutiny, Defendants' policies flunk the intermediate scrutiny reserved for content-neutral restrictions. 7

D. Defendants' policies would not pass muster even in a limited public forum. 8

E. Defendants' policies are overbroad. 9

III. Defendants cannot evade the fact that the other factors favor enjoining both policies. 9

CONCLUSION 10

CERTIFICATE OF SERVICE 12

TABLE OF AUTHORITIES

CASES

Bd. of Airport Comm'rs of L.A. v. Jews for Jesus, Inc.,
482 U.S. 569 (1987) 8, 9

Bowman v. White,
444 F.3d 967 (8th Cir. 2006) 4

Buckley v. Valeo,
424 U.S. 1 (1976) 7

C.E.F. of N.J., Inc. v. Stafford Twp. Sch. Dist.,
386 F.3d 514 (3d Cir. 2004) 6

City of Lakewood v. Plain Dealer Publ'g Co.,
486 U.S. 750 (1998) 5, 6

Cornelius v. NAACP Legal Def. & Educ. Fund,
473 U.S. 788 (1985) 9

Daily Servs., LLC v. Valentino,
756 F.3d 893 (6th Cir. 2014) 10

Erznoznik v. City of Jacksonville,
422 U.S. 205 (1975) 6

Felder v. Casey,
487 U.S. 131 (1988) 10

Forsyth Cnty. v. Nationalist Movement,
505 U.S. 123 (1992) 5, 6

Freedman v. Maryland,
380 U.S. 51 (1965) 6

Gilles v. Garland,
281 Fed. Appx. 501 (6th Cir. 2008) 6

Gilles v. Miller,
501 F. Supp. 2d 939 (W.D. Ky. 2007) 4

Gregoire v. Centennial Sch. Dist.,
907 F.2d 1366 (3d Cir. 1990) 5

Hays Cnty. Guardian v. Supple,
969 F.2d 111 (5th Cir. 1992) 2, 7, 8

Holloman v. Harland,
370 F.3d 1252 (11th Cir. 2004) 4

Lee v. Int'l Soc'y for Krishna Consciousness, Inc.,
505 U.S. 830 (1992) 9

Matal v. Tam,
137 S. Ct. 1744 (2017) 6

McCullen v. Coakley,
134 S. Ct. 2518 (2014) 8

McGlone v. Bell,
681 F.3d 718 (6th Cir. 2012) 7

Miller v. Cincinnati,
622 F.3d 524 (6th Cir. 2010) 9, 10

OSU Student Alliance v. Ray,
699 F.3d 1053 (9th Cir. 2012) 5, 7

Patsy v. Bd. of Regents of State of Fla.,
457 U.S. 496 (1982) 10

Pro-Life Cougars v. Univ. of Hous.,
259 F. Supp. 2d 575 (S.D. Tex. 2003) 2, 6

Reed v. Town of Gilbert,
135 S. Ct. 2218 (2015) 4, 7

Roberts v. Haragan,
346 F. Supp. 2d 853 (N.D. Tex. 2004) 7

Rosenberger v. Rector & Visitors of Univ. of Va.,
515 U.S. 819 (1995) 5

Schneider v. New Jersey,
308 U.S. 147 (1939) 8

Shuttlesworth v. City of Birmingham,
394 U.S. 147 (1969) 5

Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams,
2012 WL 2160969 (S.D. Ohio Jun. 12, 2012) 1, 6, 7, 8, 9, 10

Widmar v. Vincent,
454 U.S. 263 (1981) 1

OTHER AUTHORITIES

Alliance Defending Freedom, *Grand Valley State University Revises Expressive Activity Policy, available at* http://www.adfmedia.org/News/PRDetail/?CID=93009 10

Kellogg Cmty. Coll., *About KCC*, http://www.kellogg.edu/about 4

INTRODUCTION

Recognizing they cannot defend their policies, Defendants resorted to litigating a case of their own invention, one that has nothing to do with students, but instead involves off-campus speakers who failed to get the required sponsor and permit but could have spoken anywhere. This tale lacks any sworn evidence, in contrast to Plaintiffs' Verified Complaint. Defendants admit students have been involved at every stage of the case, including the coming semester, and they never questioned anyone's student status in September 2016. Plus, this tale ignores Defendants' written Speech Permit Policy and the way they enforced their unwritten Speech Zone Policy on numerous occasions.

Legally, Defendants rely on cases involving off-campus speakers (*i.e.*, street preachers) when there is no question their policies were enforced against students, are being challenged by students, and—unless enjoined—will silence students in the coming year. Thus, these plaintiffs are the very "persons entitled to be" on campus. *Widmar v. Vincent*, 454 U.S. 263, 268 (1981). Defendants ask this Court to ignore the case that is directly on point, legally and factually, from the Southern District of Ohio (as well as those from federal courts around the country on which it relies), where members of one of Plaintiffs' sister chapters wanted to engage in the same expression (*i.e.*, collecting signatures), were required to get a permit, were confined to one location, and were threatened with arrest if they exercised their First Amendment rights elsewhere. *Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams*, 2012 WL 2160969, *1–2 (S.D. Ohio Jun. 12, 2012). There, the court rejected the argument (which Defendants repeat here) that outdoor areas of campus are limited public fora for students, ruled that the restrictions were unconstitutional prior restraints that were not narrowly tailored to any significant government interests and that were also overbroad and vague, and issued a preliminary injunction. *Id.* at *3–9. This Court—facing more egregious facts, similar policies, and the same tired arguments—should do the same.

ARGUMENT

I. Defendants cannot evade the facts of this case.

A. Defendants cannot pretend that this is anything other than a student speech case.

Defendants say this is not a student speech case by questioning Young Americans for Liberty's ("YAL") and Mrs. Gregoire's status at Kellogg Community College ("KCC"). Defs.' Mot. for

Prelim. Inj. Resp. Br. ("Defs.' Resp.") at 3, 8–11, 14–17, 19, PageID.332, 337–40, 343–46, 348. Yet they admit Mr. Withers was a student when they enforced their policies to stop his speech, *id.* at 3, PageID.332 ("Plaintiff Withers was a KCC student in the fall of 2016[.]"), and Mrs. Gregoire "is currently enrolled as a student at [KCC]." Answer ¶ 19, PageID.213. So they enforced the policies against a student, and a student is challenging those policies. For this injunction, all that matters is that Mrs. Gregoire will be a student in the fall. 1st Gregoire Decl. ¶¶ 5–6, PageID.313.

In September 2016, Mrs. Gregoire was far from a stranger to KCC, unlike a street preacher. She had been a KCC student ever since the summer of 2015. 2d Gregoire Decl. ¶¶ 4–6. While not technically taking classes in the fall of 2016, she started them again in the spring and plans to do so until she completes her degree in 2019. *Id.* ¶¶ 7–8; 1st Gregoire Decl. ¶¶ 5–6, PageID.313. Even Defendants did not question her student status when they arrested her. 2d Gregoire Decl. ¶ 32; Compl. ¶¶ 157–94, PageID.22–26. Instead, they said she was "violating the *Code of Conduct for Students*," which obviously applies to students. Compl. ¶ 180, PageID.25. They cannot treat Mrs. Gregoire as a student when they arrest her and later question her status to evade accountability.

Students regularly enlist off-campus entities to help effectuate their speech, and yet it is still rightly considered student speech. When the Fifth Circuit struck down a university's leafletting restrictions, the plaintiffs were a "small local newspaper" and "students currently enrolled" at the university. *Hays Cnty. Guardian v. Supple*, 969 F.2d 111, 114 (5th Cir. 1992). Like Defendants, the university tried to frame the case as excluding non-students, but the Fifth Circuit refused because, as here, plaintiffs challenged rules restricting student speech. *Id.* at 121. When a student group successfully challenged another speech zone, it was hosting a large display consisting of vinyl panels, aluminum pipes, and sandbags provided by an off-campus entity. *Pro-Life Cougars v. Univ. of Hous.*, 259 F. Supp. 2d 575, 578 (S.D. Tex. 2003). Yet the court still treated the display as student speech. *Id.* at 582 (finding areas of campus in question were "public fora designated for student speech"). Hence, even if Mr. Withers were the only student involved in September 2016, this is still a student speech case. Neither Plaintiffs' affiliation with a national group committed to defending free speech nor their cooperation with non-students changes the nature of this case.

B. Defendants cannot revise the challenged policies or change the reasons that they stopped Plaintiffs and arrested Mrs. Gregoire.

Defendants claim Plaintiffs ran afoul of the rule requiring off-campus groups (*i.e.*, YAL) to be sponsored before speaking on campus. Defs.' Resp. at 10, 14–15, PageID.339, 343–44. Yet no KCC official ever mentioned this rule. 2d Gregoire Decl. ¶ 33; Compl. ¶¶ 157–94, PageID.22–26. Instead, they treated Mrs. Gregoire as a student and admit Mr. Withers was one. So YAL needed no sponsor. They repeatedly allowed Mrs. Gregoire to table for YAL and another start-up group during 2015–16 without a sponsor as she was a student recruiting members for new student groups. 2d Gregoire Decl. ¶¶ 13, 21, 30; Compl. ¶¶ 136–44, PageID.20–21. If Defendants now want to re-interpret their policies to treat students who are not affiliated with a recognized student group as "[n]on-College organizations" under the Speech Permit Policy, requiring these students to find an official student group to sponsor them before speaking, Plaintiffs will challenge this policy. But that is not how they interpreted or enforced the policy in the nearly two years preceding their brief.

Next, Defendants try to revise their policies by claiming expression is not limited to a table and can occur anywhere. Defs.' Resp. at 13–17, PageID.342–46. Earlier, they faulted Plaintiffs for choosing "not to conduct their Solicitation in a location approved by KCC," explaining that Plaintiffs "could continue soliciting in the Student Center." *Id.* at 7, PageID.336. This is what KCC officials consistently told Plaintiffs. In early 2016, they stopped Mrs. Gregoire from speaking outdoors, saying that "she was required to reserve a table in the Student Center to speak with students." Compl. ¶ 137, PageID.20. In September 2016, a KCC official told Plaintiffs the same. *Id.* ¶ 157, PageID.22. Defendant Hutchinson told them "'solicitation' was not allowed in this area of campus" (*i.e.*, outside the Binda Center). *Id.* ¶ 161, Answer ¶ 161, PageID.232. He repeatedly said KCC policy restricted student speech "to an information table in the Student Center." Compl. ¶¶ 162, 170–74, PageID.23–24. Defendant West reiterated that Plaintiffs were violating the *Code of Conduct for Students* by continuing to speak outside the Binda Center. *Id.* ¶ 180, PageID.25. In 2015, KCC officials consistently confined Mrs. Gregoire to an indoor table and stopped her when she tried to speak elsewhere. 2d Gregoire Decl. ¶¶ 9–25. Defendants cannot enforce a policy for almost two years, arrest people for violating it, and then pretend that it does not exist.

Though they invoke insubordination, Defs.' Resp. at 6–7, 18, PageID.335–36, 347, Defendants cannot "prevent [Plaintiffs] from exercising a constitutional right simply by telling them not to do so." *Holloman v. Harland*, 370 F.3d 1252, 1276 (11th Cir. 2004). Even high school "officials may not punish indirectly, through the guise of insubordination, what they may not punish directly." *Id.*

II. Defendants cannot evade the fact that their policies violate the First Amendment.

A. Both policies are content- and viewpoint-based and were enforced that way.

Defendants seek to distract from the viewpoint discrimination inherent in their Speech Permit Policy by pointing to random quotations about colleges' "educational mission." Defs.' Resp. at 11, PageID.340. But none of those quotations discuss a policy like Defendants', where speech is "permitted only when [it] support[s] the mission of [KCC] or . . . of a recognized college entity or activity." Compl. ¶ 107, PageID.16. Instead, those courts discussed how colleges can limit outside speakers not affiliated with a student or student group because the campus is supposed to be dedicated to students. *See Gilles v. Miller*, 501 F. Supp. 2d 939, 948 (W.D. Ky. 2007); *Bowman v. White*, 444 F.3d 967, 980 (8th Cir. 2006). But Defendants do not deny that Mrs. Gregoire is a student and will be one for the period for which the injunction is sought. Unlike Defendants, none of these universities required speakers to support their institutional missions to speak on campus.

Trying to dodge their Speech Permit Policy's language, Defendants quote their mission statement. Defs.' Resp. at 4, PageID.333.[1] But under it, they can ban anything they decide it does not "enrich our community [or] the lives of individual learners." Kellogg Cmty. Coll., *About KCC*, http://www.kellogg.edu/about (last visited Jul. 5, 2017). Its "core components" magnify the viewpoint discrimination. Under these, Defendants can ban speech they decide does not "lead to enhanced employability," help students "think critically," or "demonstrate global awareness." *Id.* They can silence anything they deem does not "promote, support, and enhance student success" or provide "opportunities that result in personal growth and development." *Id.* If speech expresses views that Defendants decide meets these amorphous criteria, it is allowed. If not, it is banned.

[1] In addition, the purpose of Defendants' policies is irrelevant. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015) (finding content discrimination despite "an innocuous justification").

This is a textbook example of targeting "particular views taken by speakers on a subject." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Neither KCC's mission nor its "core components" provides the "narrow, objective, and definite standard to guide" officials that the First Amendment requires. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969); *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366, 1374 (3d Cir. 1990) (finding "educational mission" is "so vague" as to give "virtually unbridled discretion").

Despite a conclusory assertion, Defs.' Resp. 11–12, PageID.340–41, this policy puts no limits on discretion. Even Defendants cannot identify the limits they insist exist. *Id.* Terms like "assur[ing] reasonable conduct of public business, the educational process, [and] unobstructed access to the College," Compl. ¶ 89, PageID.14, call for the "appraisal of facts, the exercise of judgment, and the formation of an opinion," thus violating the First Amendment. *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992). Defendants interpreted them to mean that four people handing out Constitutions blocked access to education and had to be arrested or threatened with arrest. Compl. ¶¶ 159–91, PageID.23–26. Indeed, any expressive activity poses more risk of disruption or obstruction than its absence, and so these terms can be used to stop anything. Besides, nothing requires officials to approve requests that meet all the "governing conditions," allowing officials to deny them for other unspecified reasons (*e.g.*, an official's whim). *Id.* ¶¶ 102–03, PageID.16.

The same is true of Defendants' Speech Zone Policy, which, being unwritten, is analogous to the unwritten policy stricken at Oregon State. Pls.'s Mot. for Prelim. Inj. Br. ("Pls.' Br.") at 11–12, PageID.296–97. The "fact that the 'policy' [is] not written . . . mean[s] there [are] no standards by which the officials [can] be limited," leaving "them with unbridled discretion." *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1064–65 (9th Cir. 2012). By now pretending that this policy does not exist, Defendants just highlight this constitutional flaw. *See supra* Part I.B.

Defendants claim Plaintiffs "fail to provide any evidence that the Policy results in viewpoint discrimination." Defs.' Resp. at 11, PageID.340. But "[f]acial attacks . . . are not dependent on the facts surrounding any particular permit denial." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770 n.11 (1998). Their success "rests not on whether the administrator has exercised his

discretion in a content- [or viewpoint-] based manner, but whether there is anything in the [policy] preventing him from doing so." *Forsyth Cnty.*, 505 U.S. at 133 n.10.[2]

Besides, Plaintiffs provided ample evidence of viewpoint- and content-based enforcement. Defendant Hutchinson observed Plaintiffs' innocuous communication (*i.e.*, "Do you like freedom and liberty?"), labeled it "provocative," and ordered them to stop speaking outside the Binda Center and go through the process of getting a table in the Student Center. Compl. ¶¶ 164–66, PageID.23. But to "exclude a group simply because it is controversial or divisive is viewpoint discrimination." *C.E.F. of N.J., Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 527 (3d Cir. 2004) (Alito, J.); *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) ("Giving offense is a viewpoint."). He did this to "protect" rural students who "might not feel like they have the choice to ignore the question." Compl. ¶ 169, PageID.24. Yet "[l]istener's reaction to speech is not a content-neutral basis for regulation." *Forsyth Cnty.*, 505 U.S. at 134. KCC officials are not empowered to protect adults, even "unwilling listener[s]," from hearing things. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210 (1975).

Defendants point to language saying they "will not take the content of the speech into consideration." Defs.' Resp. at 1, PageID.330. But they did just that here. So the cited language is just an empty promise, not a limit on discretion or a protection against content or viewpoint discrimination. The University of Houston similarly said it "considers only content-neutral factors when applying [its policy]," but the court rejected this as it "presumes [officials] will act in good faith and adhere to standards absent from the [policy's] face," which "'is the very presumption that the doctrine forbidding unbridled discretion disallows.'" *Pro-Life Cougars*, 259 F. Supp. 2d at 584 (quoting *Lakewood*, 486 U.S. at 770). Defendants' already-broken promise deserves a similar fate.

B. The outdoor areas of campus represent designated public fora for students.

Defendants say their "campus is a limited public forum," citing *Gilles v. Garland*, 281 Fed. Appx. 501, 511 (6th Cir. 2008). Defs.' Resp. at 9, PageID.338. But *Williams*, 2012 WL 2160969, at *4–5, rejected this: "*Gilles* does not suggest, nor is this Court aware of any other precedent

[2] Nor must Plaintiffs seek a permit, Defs.' Resp. at 6, PageID.335, as "it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion . . . whether or not he applied for a license." *Freedman v. Maryland*, 380 U.S. 51, 56 (1965).

establishing, that a public university may constitutionally designate its entire campus as a limited public forum *as applied to students*." The "public exterior areas" at issue here "*remain designated public fora as to students*." *Id.* Treating them as anything less would be "anathema to the nature of a university." *Id.* Indeed, they can be traditional and designated public fora, even for nonstudents. *McGlone v. Bell*, 681 F.3d 718, 732–33 (6th Cir. 2012); Pls.' Br. at 14–15, PageID.299–300. Here, no one disputes Plaintiffs include people who will be students this fall.

C. In addition to failing strict scrutiny, Defendants' policies flunk the intermediate scrutiny reserved for content-neutral restrictions.

Defendants never try to show that their policies pass the strict scrutiny reserved for content- and viewpoint-based policies. *Reed*, 135 S. Ct. at 2226. Most of their intermediate scrutiny argument consists of pretending that their Speech Zone Policy does not exist, Defs.' Resp. at 15–16, PageID.344–45, though they enforced it for years. *See supra* Part I.B.

In identifying interests their policies serve, Defendants "cannot simply assert interests that are important in the abstract," *Williams*, 2012 WL 2160969, at *6, but that is all they did. Defs.' Resp. at 15–16, PageID.344–45. Drawing from street-preacher cases, they identified interests courts have previously found not narrowly tailored for similar policies. *See, e.g.*, *Hays Cnty.*, 969 F.2d at 119–21 (finding leafleting restrictions not narrowly tailored to "preserving the academic environment and security," "traffic control," and "preserving the campus's appearance," *inter alia*); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 863, 869–70 (N.D. Tex. 2004) (striking prior permission policy as not narrowly tailored to preserving an academic environment, avoiding conflicting uses of space, and traffic concerns); *OSU Student Alliance*, 699 F.3d at 1064 (striking unwritten policy despite interest of "maintaining the aesthetic beauty of campus"). Even their interest in "fostering a diversity of uses" is suspect because the "'concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.'" *Hays Cnty.*, 969 F.2d at 121 (quoting *Buckley v. Valeo*, 424 U.S. 1, 48–49 (1976)).

Also, Defendants never showed how their policies are narrowly tailored to these interests. Too often "silencing the speech is . . . the path of least resistance. But by demanding a close fit between

ends and means, the tailoring requirement prevents the government from too readily sacrific[ing] speech for efficiency." *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014). Distributing a political newspaper is "compatible" with a college's "academic mission," *Hays Cnty.*, 969 F.2d at 119, so distributing Constitutions is as well. If KCC needs to coordinate the use of space, it can create an optional reservation process and prohibit students speaking spontaneously from disrupting other events. To address safety, it should focus on events that threaten it, not "paint with a broad brush to encompass all speech." *Williams*, 2012 WL 2160969, at *7. But it "is simply unfathomable that a [KCC] student needs to give [KCC] advance notice of an intent to gather signatures [or distribute literature]. *There is no danger to public order arising out [of] students walking around campus with clipboards seeking signatures [and distributing Constitutions].*" *Id.* at *7 n.5.

Defendants claim to provide ample alternative channels for communication by saying students can always go off campus if they want to speak without first getting KCC's permission. Defs.' Resp. at 16, PageID.345. This is hardly ample for communicating with fellow students. Plus, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939).

D. Defendants' policies would not pass muster even in a limited public forum.

Even in a nonpublic forum, Defendants' Speech Permit and Speech Zone Policies have been unconstitutional for thirty years. In the 1980s, Los Angeles International Airport banned expressive activities in its terminals. *Bd. of Airport Comm'rs of L.A. v. Jews for Jesus, Inc.*, 482 U.S. 569, 570–71 (1987). Defendants do likewise. Anywhere on campus, "solicitation," which they define to encompass vast swaths of protected speech, "is permitted only if [it] has been approved by Student Life." Compl. ¶¶ 83–87, PageID.13–14. To speak on campus, students must get a permit and stay behind a table in the Student Center. *See supra* Part I.B. Like LAX's, Defendants' policies "reach[] the universe of expressive activity, and, by prohibiting *all* protected expression, purport[] to create a virtual 'First Amendment Free Zone'" on campus. *Jews for Jesus*, 482 U.S. at 574. Such bans, especially with a permit-based exemption, are unconstitutional in any forum: "We think it is obvious that such a ban cannot be justified even if LAX were a nonpublic forum because no

conceivable governmental interest would justify such an absolute prohibition on speech." *Id.* at 575. Telling students to leave campus to speak does not fix anything. *Lee v. Int'l Soc'y for Krishna Consciousness, Inc.*, 505 U.S. 830, 831 (1992) (finding ban on leafleting in nonpublic fora inside airport, which allowed it on sidewalks outside, violated First Amendment).

A policy unreasonable in airports cannot be reasonable for students in the "marketplace of ideas," *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 809 (1985) (noting reasonableness "must be assessed in the light of the purpose of the forum"), especially when Defendants have discretion to grant exceptions via permits.

E. Defendants' policies are overbroad.

To obscure their policies' overbreadth, Defendants pretend one policy does not exist and invoke insubordination. Defs.' Resp. at 17–18, PageID.346–47. But these efforts fail. *See supra* Part I.B. Their policies still restrict practically all forms of constitutionally protected speech in all areas of campus. Compl. ¶¶ 83–86, PageID.13–14. They led to arresting three people who were peacefully distributing Constitutions and talking with students and to threatening a fourth. They clearly burden substantially more speech than needed to achieve any legitimate, let alone significant or compelling, interest Defendants may have. *See supra* Part I.D; Pls.' Br. at 17–21, PageID.302–06.[3]

III. Defendants cannot evade the fact that the other factors favor enjoining both policies.

Plaintiffs clearly demonstrated an irreparable injury, seeing as "'even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.'" *Williams*, 2012 WL 2160969, at *8 (quoting *Miller v. Cincinnati*, 622 F.3d 524, 540 (6th Cir. 2010)). They clearly wish to speak spontaneously, something that is impossible given Defendants' policies, but have held back, fearing further enforcement. Compl. ¶¶ 200, 202–03, 208–13,

[3] Defendants' Fourteenth Amendment arguments similarly fail. Nothing they say changes how their policies are vague because they give so much discretion as to "present[] [KCC] officials with the opportunity for arbitrary or discriminatory enforcement," making them "unconstitutionally vague on [their] face." *Williams*, 2012 WL 2160969, at *7–8. Plus, "[KCC's] own employees have different understandings of the[ir] terms." *Id.* Even if arrest were a possible sanction, Defendants do not explain how their policies can be clear when so many officials gave Plaintiffs so many different messages and had to spend so much time consulting on what the policies meant and how they applied. Pls.' Br. at 22–23, PageID.307–08. As to equal protection, this was student speech, giving Plaintiffs as much right to speak as any other group, regardless of its status).

PageID.27–28; 2d Gregoire Decl. ¶¶ 34–37. Defendants' assurance—"Just do what we say, and no one gets hurt"—hardly alleviates the chill and constitutional injury.

After having Plaintiffs arrested and threatened with arrest, Defendants fault them for "not attempt[ing] to resolve their issue . . . through other avenues." Defs.' Resp. at 21, PageID.350. Yet they faulted YAL's national organization for urging students to resolve matters outside the legal system. *Id.* at 3, PageID.332. More importantly, "exhaustion of state administrative remedies is not a prerequisite to an action under § 1983." *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 507 (1982); *Felder v. Casey*, 487 U.S. 131, 147 (1988) (same); *Daily Servs., LLC v. Valentino*, 756 F.3d 893, 900 (6th Cir. 2014) (same). Still, since filing this lawsuit, Plaintiffs (and this Court) have pointed Defendants to policies they could use to remedy the issues presented in this motion. As they rejected this input, it is absurd to assume they would have been more receptive to an informal request from students they threatened with arrest or arrested and banned from campus.

The balance of harms and public interest also decidedly favors Plaintiffs because "'it is always in the public interest to prevent the violation of a party's constitutional rights.'" *Williams*, 2012 WL 2160969, at *8 (quoting *Miller*, 622 F.3d at 540). Despite Defendants' dire warnings, Defs.' Resp. at 23, PageID.352, neither injunctions nor policy revisions have thrown the University of Cincinnati, Grand Valley State University, or any other university where similar policies have been successfully challenged into anarchy or chaos.[4] *See* Pls.' Br. at 7 n.2, PageID.292.

CONCLUSION

When a public university confined student speech to one corner of a quad, required students to give notice and get a permit, and threatened to arrest them if they spoke elsewhere, a federal court issued a preliminary injunction. *Williams*, 2012 WL 2160969 at *1–2, 9. Defendants confine student speech to one indoor location, require students to get a permit, and both threatened to arrest and actually arrested them for speaking elsewhere. Thus, Plaintiffs respectfully request that this Court issue a preliminary injunction against Defendants' Speech Permit and Speech Zone Policies.

[4] Alliance Defending Freedom, *Grand Valley State University Revises Expressive Activity Policy*, *available at* http://www.adfmedia.org/News/PRDetail/?CID=93009 (last visited Jul. 5, 2017).

Respectfully submitted this 5th day of July, 2017,

/s/ Travis C. Barham

DAVID A. CORTMAN
Georgia Bar No. 188810
TRAVIS C. BARHAM
Georgia Bar No. 753251
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Road NE, Ste. D-1100
Lawrenceville, Georgia 30043
Telephone: (770) 339–0774
Facsimile: (770) 339–6744
dcortman@ADFlegal.org
tbarham@ADFlegal.org

CASEY MATTOX
Virginia Bar No. 47148
ALLIANCE DEFENDING FREEDOM
440 1st Street, NW, Ste. 600
Washington, D.C. 20001
Telephone: (202) 393–8690
Facsimile: (202) 347–3622
cmattox@ADFlegal.org

JESHUA T. LAUKA (P71958)
DAVID & WIERENGA, P.C.
99 Monroe Avenue, N.W., Suite 1210
Grand Rapids, Michigan 49503
Telephone: (616) 454–3883
Facsimile: (616) 454–3988
jeshua@dwlawpc.com

TYSON C. LANGHOFER
Arizona Bar No. 032589
ALLIANCE DEFENDING FREEDOM
15100 North 90th Street
Scottsdale, Arizona 85260
Telephone: (480) 444–0020
Facsimile: (480) 444–0024
tlanghofer@ADFlegal.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2017, I electronically filed a true and accurate copy of the foregoing document with the Clerk of Court using the CM/ECF system, which automatically sends an electronic notification to the following attorneys of record:

MEGAN P. NORRIS
CHRISTOPHER M. TREBILCOCK
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
150 West Jefferson Avenue, Suite 2500
Detroit, Michigan 48226
Telephone: (313) 964–6300
norris@millercanfield.com
trebilcock@millercanfield.com

Attorneys for Defendants

Respectfully submitted on this the 5th day of July, 2017.

/s/ Travis C. Barham
Travis C. Barham
Attorney for Plaintiffs

Testimony of Mitchell Steffen
Submitted for the record February 29,2016

Members of the House Committee on Ways and Means Subcommittee on Oversight,

Thank you for offering me this opportunity to testify today on my recent experience with censorship of free speech on campus.

My name is Mitchell Steffen and I am a freshman student at Macomb Community College located in Clinton Township of Macomb County, Michigan.

On Tuesday, February 16, 2016, I was registering students for Young Americans For Liberty, a student group with an active campus membership, with a friend inside the student life building located on the center campus during school hours. We were carrying clipboards; we had no table and posted no materials on the walls. We approached students passing by and elicited them to join our organization, which discusses and advocates on freedom issues on college campuses (including, ironically, freedom of speech on campus.)

We canvassed the area for about 20 minutes when we were approached by a school official who did not identify herself but insisted we stop and refrain from recruiting students without first obtaining permission from the administration. I asked her what would happen if we refused to do so. She replied by saying that campus police would make us stop by whatever means necessary.

We complied to avoid escalating the situation, but once the official left, we struck up conversations with students about what had just happened.

Subsequently, we reserved a table to canvass at the student life center at the South campus, again to recruit members for our organization. We were approached by the same woman, who asked whether we were petitioning. We informed her we were not. She explained that for our information, we could not petition without obtaining prior approval from the administration. She departed and allowed us to continue recruiting at our table, but returned shortly thereafter and presented us with a printed copy of the college's policy on "expressive activity," with handwritten contact information for Geany Maiuni, Dean of Student and Community Services.

The policy is located on the Web at: http://www.macomb.edu/about-macomb/college-policies/administrative/policy-expressive-activity.html and is attached.

She departed and we concluded the event without further incident.

I have serious concerns about both the policy on “expressive activity” and the incidents. I will discuss the policy first.

Nowhere is any lawful authority cited for the university to demand students obtain prior permission to engage in “expressive activity,” to prohibit “expressive activity” inside College buildings, or to exempt labor unions from these rules. Nowhere is any explanation provided for the *need* to demand students obtain prior permission to engage in “expressive activity”: no

record of any pattern of problems created by "expressive activity" was offered. No explanation for prohibiting "expressive activity" in College buildings was given.

While it might be unnecessary to cite the legal reasons for rules relating to, for example, signage size limits near roads, it is, or certainly should be, necessary to justify rules that clearly inhibit free speech. It is unreasonable to limit students' right to "expressive speech" to outdoor areas, where rain, snow, and bitter cold can discourage participation and even pose safety hazards.

There is no remedy provided for a Dean's failure to grant permission promptly, or for any failure on the part of the Dean or the College.

Finally, and perhaps most importantly, there is no justifiable reason why my community college should be permitted to define activities it can regulate as "expressive speech" using such broad terms as "assemblies" and "campaigning" which do not carry any inherent risk to public health and safety. The College is not, or certainly should not be, permitted to limit the First Amendment rights of its students.

Now, as to the incidents.

In the first, the campus official – perhaps the Dean herself – ordered us to cease and desist, under threat of possible academic sanctions or even arrest, without making even basic inquiries to determine whether we were actually in violation of any policy.

I do not believe my friend and I violated any campus policy, and we were wrongfully stopped from freely engaging in lawful activity.

I do not believe it would have been, or should have been, lawful for the College to have stopped us if we had been petitioning, demonstrating, or "assembling" if we were not doing so disruptively.

In the second incident, the campus official was more reserved, since this time she did not stop us from approaching our fellow students under threat of police action, when we were doing nothing different from the first incident. But because we were doing nothing different, and we were approached and delivered a printed copy of the "expressive activity" policy, we interpreted the intent of the agent of the Dean as to send a clear message that we were being closely watched and advised to obey the unconstitutional policy.

I strongly believe both the policy and the manner it is enforced are highly inappropriate, and a symptom of a more systemic problem of a lack of concern for the First Amendment in college administrative policy.

The policy was undoubtedly reviewed by College attorneys who apparently saw no problem with the issues I raise here. The conduct of the official who wrongly threatened me and my friend suggests that there is no policy for administrators' conduct to ensure they are aware of students' rights.

I believe we need stronger protection for the First Amendment rights of students on college campuses. While these matters are often appropriately handled at the state level, the

Fourteenth Amendment grants Congress the authority to protect the First Amendment rights of citizens at the state level.

Thank you for taking the time to contemplate this important constitutional issue. The right of students to engage in free speech and political assembly on college campuses improves the quality of political discourse, which benefits our society as students graduate to become leaders.

I appreciate your consideration of my story, my situation, and my interpretation of what these facts mean.

Respectfully submitted,

Mitchell Steffen

Macomb Community College Policy on Expressive Activity

I. Purpose and Definitions

A. The purpose of these Guidelines is to ensure an atmosphere conducive to learning, the reasonable conduct of public business, unobstructed access to the College for its students, faculty, employees, occupants and the public, and maintenance of the College grounds.

B. The grounds of the College are defined as all lands and buildings of all campuses of Macomb Community College and include (by way of illustration and not of limitation) the exterior walls and surfaces of the buildings, entrances, porches, outside staircases, sidewalks, parking lots and all fixtures.

C. Expressive activity is defined as the carrying or displaying of signs or placards, leafleting, campaigning, marches, rallies, parades, demonstrations, protests, assemblies, speeches, circulation of petitions, and/or any public demonstration on the grounds.

II. Scheduling.

Requests to schedule expressive activity on the College grounds shall be made to the Dean of Student and Community Services or his/her designee (hereinafter, Dean)

A. Requests must be made in writing to the Dean during regular business hours at least 48 hours prior to any expressive activity on a form supplied by the College.

B. Each request shall be in writing and shall contain the following information:

1. Name/address/telephone number(s) of contact person(s).
2. Name/address/telephone number(s) of back up contact person(s).
3. Date and hours requested for the expressive activity and duration of the expressive activity.
4. Area requested for use.
5. Number of anticipated participants
6. Structures to be used in the expressive activity.

C. In order to assure the reasonable conduct of public business, the educational process, unobstructed access to the College for its students, faculty, employees, occupants and the public, and to maintain the College grounds, the Dean has been delegated the authority to approve, modify or deny an application for expressive activity.

D. The Dean will review applications and may approve, modify or deny an application. The Dean will not take the content of the speech into consideration when approving, modifying or denying an application.

E. All decisions by the Dean required under these procedures shall be made as promptly as possible, but no later than 24 hours after receiving the written request.

F. If a person or organization is aggrieved by a decision of the Dean, an appeal may be taken to the Vice President for Student Services within three College business days of that decision. The appeal shall be in writing, stating the basis therefore, and the relief sought. The Vice President shall announce a decision as promptly as possible, but no later than six College business days after the Vice President has received the appeal.

III. Governing Conditions.

Public use of the College grounds for expressive activity is subject to the following:

A. Use of the College grounds by an individual or organization for expressive activity is permitted only if the expressive activity has been approved by the Dean.

B. In order to maintain the security, safety and aesthetic appearance of the College and College grounds, and to provide for regular maintenance, improvements or alterations, expressive activity on the College grounds may occur only between the hours of 8:00 a.m. and 8:00 p.m. and shall at no time block any entrance or exit of the buildings, or impede free access to the buildings or parking lots by its students, faculty, employees, occupants or the public. Expressive activity shall not impede or interfere with College business, the educational process, or public access to and use of the College grounds. The College reserves the right to stop any expressive activity when it interferes with or disrupts the normal activities of the College; interferes with the educational process; or violates any of the conditions covering expressive activity under this policy.

C. To provide for regular maintenance, improvements or alterations of the College grounds and in order to maintain the security, safety and aesthetic appearance of the College and College grounds, equipment, signs, banners or structures of any kind that are placed on the College grounds in connection with any expressive activity shall be free standing and shall not be affixed to any building,

tree, monument, fixture or other College structure. The equipment, signs, banners or structures shall be entirely removed at the conclusion of the scheduled expressive activity, or no later than 8:15 p.m. on any day of expressive activity. Structures (whether for shelter or for any other purpose) erected by an organization as part of a scheduled expressive activity must be approved by the Dean.

D. Due to the presence of underground utility, electrical and drainage lines, signs or banners shall not be driven into the ground; nor shall they be supported in or by any tree, monument or other structure affixed to the College grounds. Signs or banners supported by freestanding devices may not be left unattended, i.e., an individual must be stationed within two feet of a freestanding sign or banner at all times to prevent damage to the property and injury to individuals.

E. Defacing or damaging the College grounds, including but not limited to trees, shrubbery, flowers, lawns, sidewalks, parking lots, fences, lighting fixtures, light wells, fire hydrants, benches, statues, monuments, plaques, and such subterranean features as are necessary for the maintenance and operation of the College (such as lawn sprinkler systems, sewer and water mains, electrical conduit, etc.), or any other feature is not allowed. Likewise, defacing or damaging the exterior walls and surfaces of the buildings, including the entrances, porches and staircases, is not allowed.

F. Stepping or climbing upon statues, monuments, fences, lighting fixtures, light wells, trees, or parts of the College building not intended for such purposes is not allowed.

G. No sign located within 50 feet of a roadway, entrance or exit shall be larger than 3' x 3', and no sign shall block the sight lines of drivers entering or exiting the College grounds or traveling on a public roadway around the College.

H. Vehicles are not allowed on the College grounds, except in areas designated for vehicular use.

I. Camping or sleeping overnight on the College grounds is not allowed.

J. Alcoholic beverages or any other controlled substance shall not be possessed, dispensed, or consumed on the College grounds.

K. Individuals distributing literature shall remove all discarded items from the grounds at the conclusion of their activity.

L. To insure public safety, firearms, or other weapons are not allowed on campus.

M. Persons engaged in expressive activity must comply with all College policies, Campus Rules and Regulations, and local, state and federal ordinances and statutes.

N. Expressive activity inside College buildings is prohibited.

O. This policy does not apply to labor disputes between construction contractors of the College and labor unions or facility licenses issued pursuant to board policy. Where a labor union wishes to engage in expressive activity, the College will set up a reserved gate as authorized by law.

Approved by President's Council
July 6, 2000

Revised November 8, 2012

Retrieved February 28, 2016. All spelling, grammar, devices, and enhancements are reproduced from the source.